

### REMARKS

Favorable reconsideration and allowance of the claims of the present application are respectfully requested.

Applicants observe that in the Final Rejection dated July 13, 2004, the Examiner indicated that the emulsion composition disclosed in Example 8 of the originally filed application was determined to be allowable over the Cauwet-Martin disclosure (i.e., U.S. Patent No. 6,488,780).<sup>1</sup> In Example 8, the polyether siloxane of Reference Example 3 (also of the original application) was used to make a stable oil-in-water emulsion. The polyether siloxane of Reference Example 3 is a compound that falls within the scope of formula (I) presently recited in Claim 1 of the present application. Specifically, the polyether siloxane of Reference Example 3 is a compound where  $n=200$ ,  $m=3$ ,  $x=13$ ,  $y=20$ ,  $z=1$ ,  $MW_{\text{silicone radicals}}=14952$ ,  $MW_{\text{polyether radicals}}=3582$ , and the proportion by weight of polyether radicals is 19%. See the table appearing at Paragraph [0088] of the originally filed application.

Applicants further observe that during a telephonic interview with their representative, the Examiner indicated that broader coverage was possible, if additional experimentation was performed showing that a stable emulsion could be produced with other polyether siloxanes as defined by Claim 1 of the present application.

In view of the above and to evidence that applicants' claimed polyether siloxanes provide stable emulsions compared to other silicone compounds as disclosed in Cauwet-Martin, a photocopy of an originally executed Declaration under 37 C.F.R. §1.132 of Thomas Dietz is submitted with this Amendment. In the attached §132 Declaration, the stability of a series of emulsions that included polyether siloxanes that fall within the scope of Claim 1 were compared to emulsion compositions that included silicone surfactants that are disclosed in Cauwet-Martin.

<sup>1</sup> The Cauwet-Martin disclosure was applied to Claims 1-9, 12, 13 and 15-23 as allegedly rendering those claims unpatentable under 35 U.S.C. §103 in the Final Rejection.

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The Reference Example polyether siloxanes (Ref. Examples A-D) used in Table 1 of the §132 Declaration have a proportion by weight of the polyether radicals that ranges from 13-32%, which falls within the range recited in Claim 1 of the present application.<sup>2</sup> The comparative examples (Comp. 3 and Comp. 4) are commercial silicone polyethers that fall within the silicone compounds of formula (I) of Cauwet-Martin. The commercial polyether siloxanes have a polyether portion of 75%, which is outside the range recited in Claim 1 of the pending application.

The above mentioned silicone compounds of the present invention and the Cauwet-Martin disclosure were then used as an emulsifier for preparing oil-in-water emulsions as indicated in Table 2 of the executed Declaration.

As indicated in paragraph 8 of the executed Declaration, the emulsions of Examples 1-5, which are representative of the claimed invention, were smooth and had a homogeneous appearance after preparation. No phase separation was observed at room temperature or at an elevated temperature within the time period that the emulsions were examined. It is observed that the emulsions were observed for a time period that is satisfactory for use in pharmaceutical and cosmetic applications. The emulsions containing the silicone compounds of Comp. 3 and Comp. 4 showed water separation at 40°C after four days. Applicants observe that this time period is not sufficient for use in the aforementioned applications.

The additional data provided in the executed Declaration shows that creams containing the polyether siloxanes of Reference Examples A-D result in stable emulsions. This result is consistent with the result in Example 8 of the originally filed application in which Reference Example 3 was used as the polyether siloxane in preparing a stable emulsion.<sup>3</sup> In contrast, the

<sup>2</sup> Applicants observe that the discussion under Table 1 of the Declaration concerning the z values of 15 and 29 is referring to original Reference Examples 2 and 5, respectively. This discussion was provided to aide the Examiner in determining the polyether siloxanes that were used in the Declaration and the present application.

<sup>3</sup> The emulsion composition of original Example 8 was reproduced in Table 2 of the Declaration and was designated in the Declaration as Example 2.

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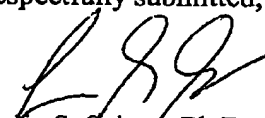
creams containing the polyether siloxanes Silwet L-722 and Silwet L-7500 result in unstable emulsions. Comb-like polyether siloxanes which also are covered in formula I of Cauwet-Martin were previously shown in the pending application to provide an unstable emulsion.

Applicants submit that the data provided in the attached Declaration, together with that previously presented in the pending application, show that the applicants have surprisingly discovered that a class of polyether siloxanes that fall within the definition of Claim 1 can be used to provide oil-in-water emulsions that are stable at room temperature and at elevated temperature relative to other polyether siloxanes that fall outside the definition of the siloxane compound of Claim 1.

In view of the above remarks and the experiments evidenced in the attached §132 Declaration, applicants submit that the claims of the present invention are patentably distinguished from the disclosure of Cauwet-Martin. Applicants thus respectfully request that the Examiner reconsider and withdrawal the rejection under 35 U.S.C. § 103 that is based upon the disclosure of Cauwet-Martin.

Thus, in view of the foregoing amendments and remarks, it is firmly believed that the present case is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,



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